

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

)	Civ. Action No.: 98-7076 (BSJ)
UNITED STATES OF AMERICA,)	
)	DEFENDANT VISA U.S.A. INC.'S
Plaintiff,)	ANSWERS TO PLAINTIFF'S THIRD
)	SET OF INTERROGATORIES
v.)	
)	
VISA U.S.A. INC., VISA)	
INTERNATIONAL CORP., AND)	
MASTERCARD INTERNATIONAL)	
INCORPORATED,)	
)	
Defendants.)	

Defendant Visa U.S.A. Inc. ("Visa"), by its counsel, hereby answers Plaintiff's Third Set of Interrogatories pursuant to Federal Rules of Civil Procedure 33 as follows.

Interrogatory No. 1:

(a) Do you contend that the relevant product market for purposes of analyzing whether defendant's actions alleged in plaintiff's complaint are anti-competitive includes the dollar volume of cash and checks spent by consumers to pay for goods and services in the United States for the relevant years?

(b) If the answer to subpart (a) is yes, do you also contend that cash and checks should be included within the relevant market analysis with respect to purchases of each of the following types of goods and services by consumers in the United States: (i) hotel rooms; (ii) restaurant meals; (iii) goods and services sold over the Internet; (iv) car rentals; (v) airlines tickets; (vi) products sold via catalogue or MOTO?

(c) For each "yes" answer to subparts (i) through (vi) of subsection (b) above, explain in detail how, in your view, cash and checks compete with general purpose credit and charge cards for purposes of purchases of such product(s) and/or service(s).

Response to Interrogatory No. 1(a): Yes.

Response to Interrogatory No. 1(b): Given that the challenged practices (duality and Visa Bylaw 2.10(e)) are alleged to be violations of Section 1 of the Sherman Act

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DEFENDANT VISA U.S.A. INC.'S ANSWERS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES

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because, *inter alia*, they blunt or adversely effect incentives to innovate, it is inappropriate to segment the relevant market by reference to the types of goods and services purchased by consumers in different retail venues. Visa's rules enable its issuer/members to offer products which broadly compete against checks, cash and other payment devices at the consumer level, whether or not they are complete or partial substitutes at any particular merchant, for any particular consumer, or for any particular type of transaction. See Expert Report of Richard Schmalensee, February 29, 2000, pp. 51-57, 96-100 ("Schmalensee Report"), which is incorporated herein by reference.

Response to Interrogatory No. 1(c): See (b) above.

Interrogatory No. 2:

(a) Do you contend that there are any pro-competitive effects that result from the past and/or present service on your Board of Directors (or other decision-making committees) by representatives of your member financial institutions whose dollar volume of credit and charge transactions on cards issued by that institution with your brand (i.e., Visa or MasterCard, respectively) is less than 80% of the total dollar volume of credit and charge card transactions (i.e., including both Visa and Master Card branded transactions) on cards issued by the member financial institution?

(b) If the answer to subpart (a) is anything other than an unequivocal no, please explain in detail the nature of the pro-competitive effects you contend exist or existed as a result of such service on your board of Directors. If the pro-competitive effects no longer exist, explain when and why they needed.

Response to Interrogatory No. 2(a): Yes.

Response to Interrogatory No. 2(b): The practice of duality to which this interrogatory is directed necessarily involves competitive tradeoffs between systems competition, on the one hand, and issuer competition on the other. Those tradeoffs were acknowledged by the DOJ in its brief filed in the *Worthen* litigation which constituted the first competitive assessment of duality by the courts. See Schmalensee Report, pp. 20-21, which is incorporated herein by reference. One manifestation of competition under duality involves issuer/members "playing off" one association management against the other, thereby producing brand competition somewhat similar to the kind of brand competition which exists under conditions of exclusivity. The ability of issuer/members

to monitor such "management competition" is enhanced by knowledge of the facts concerning the success *vel non* of a particular management's competitive efforts learned through board (and certain committee) representation. In that respect, the fact pattern addressed in this contention interrogatory may be said to yield pro-competitive effects at the systems level, even though the predominant contribution of duality to competition considered in all its aspects occurs at the issuer level. Given the existence of dual issuance, Visa is generally likely to benefit from representation on its board or important committees by financial institutions that have an important stake in the success of the association, even though these institutions may issue the cards of another open joint venture. Representatives of member banks serving on Visa board or committees, irrespective of their portfolio mix, typically focus their decision-making on behalf of the associations on the goals of increasing network efficiencies and brand awareness, maximizing Visa volume, increasing Visa merchant coverage and card issuance, reducing fraud, increasing convenience at the point of sale, and taking market share from cash, checks, and other payment methods. In all these respects, competition was enhanced. See Schmalensee Report, pp. 13-20, Expert Report of Richard Rapp, February 29, 2000, pp. 19-25, 52-54 ("Rapp Report"), which are incorporated herein by reference.

Interrogatory No. 3:

(a) Do you contend that anti-competitive effects would arise if you enacted a by-law or policy that prohibited service on your Board of Directors (and any other decision-making committees) by any representatives from member financial institutions whose dollar volume of credit and charge transactions on cards issued by that institution with your brand (i.e., Visa or MasterCard, respectively) is less than 80% of the total dollar volume of credit and charge card transactions (i.e., including both Visa and MasterCard credit and charge card transactions) on cards issued by that member financial institution?

(b) If the answer to subpart (a) is anything other than an unequivocal no, please explain in detail the nature of the anti-competitive effects you contend would arise.

Response to Interrogatory No. 3(a): Visa objects to this interrogatory on the grounds that (a) it is unduly vague and ambiguous; and (b) it involves speculation based on an incomplete hypothetical. The term "anti-competitive effects" is not defined

Assuming that (i) the term "anti-competitive effects" is intended to refer to the type of substantial harm to consumer welfare in a relevant antitrust market that would be considered unlawful under the antitrust laws, and (ii) this interrogatory refers solely to a change in governance requirements based on the current market conditions, Visa's answer would be no.

Response to Interrogatory No. 3(b): In light of Visa's recently enacted Bylaw requiring that board members' portfolios be 75 percent Visa as of a certain time, there would not likely be any material anti-competitive effects of enacting a Bylaw requiring an additional 5 percent issuance of Visa, provided there is appropriate time for the transition in an appropriate manner. However, the effect on Visa (and competition) of calculating the portfolio balance without reference to debit products may be harmful; Visa debit products are important to the association, and are likely to be important to a member's "dedication." See Schmalensee Report, pp. 31-32, which is incorporated herein by reference. In light of the actual and projected growth of debit, excluding such products from the calculation makes no sense.

Interrogatory No. 4:

(a) Do you contend that each of the current members of your Board of Directors is a representative of a member financial institution whose dollar volume of credit and charge transactions on cards issued by that institution with your brand (i.e., Visa or MasterCard, respectively) is more than 80% of the total dollar volume of credit and charge card transactions (i.e., including both Visa and MasterCard credit and charge card transactions) on cards issued by that member financial institution?

(b) If the answer to subpart (a) is anything other than an unequivocal yes, please identify the name of each representative (and the financial institution for which they work) on your Board of Directors who fails to meet the criterion described in subpart (a) and what percentage of the total dollar volume of credit and charge card transactions that representative's financial institution has on the cards it issues with your brand.

(c) If the answer to subpart (a) is an unequivocal yes, please state for how long your Board membership has been such as to permit you to make that contention truthfully.

Response to Interrogatory No. 4(a): No.

Response to Interrogatory No. 4(b): See Exhibit 1, attached hereto.

Response to Interrogatory No. 4(c): No answer required.

Interrogatory No. 5:

(a) Do you contend that Visa USA's by-law or MasterCard's policy prohibiting U.S. member institutions from issuing American Express and Discover cards has any pro-competitive effects?

(b) If the answer to subpart (a) is yes, please describe in detail each of those pro-competitive effects.

Response to Interrogatory No. 5(a): Yes.

Response to Interrogatory No. 5(b): Bylaw 2.10(e) enhances the ability of Visa as a pass-through cooperative to compete with American Express and Discover. Bylaw 2.10(e) is a reasonable rule for promoting the stability and cohesion of Visa, a cooperative. Such stability and cohesion is important to Visa's ability to garner the necessary support of its members to develop new products and services that compete with other card systems (or brands), as well as cash, checks and other payment devices. The Bylaw does not impede, and has not impeded, the vigor of competition at the systems (or brand) level, or the vigor of competition among card issuers. The Bylaw also enhances competition by making it more difficult for closed for-profit systems to enter into issuing arrangements selectively and strategically with certain Visa issuers, on terms not available to all Visa issuers, which would tend to destabilize the cooperative and its ability to compete with those closed systems, without providing any benefits to competition in a relevant market. In addition, the Bylaw operates in tandem with Bylaw 2.06 to protect the association from various forms of "free riding" by American Express and Discover. As a consequence, Bylaw 2.10(e) contributes to the ability of Visa members to compete with American Express and Discover.

These pro-competitive benefits are particularly important under current market conditions when the need for an effective mechanism ensuring issuer/member loyalty to the Visa association in financing new product initiatives is acute. This effect is described

in detail in the depositions of *inter alia* Messrs. Boardman, Williamson, Phillips, and Pascarella, to which Plaintiffs' counsel is referred. See generally Schmalensee Report, pp. 57-83, 100-124; Expert Report of Professor Ronald Gilson, February 29, 2000 ("Gilson Report") (both of which are incorporated herein by reference). See also Responses to Interrogatory Nos. 6(d) and 14.

Interrogatory No. 6:

(a) Do you contend that the ability of Visa and MasterCard member financial institutions to issue American Express cards on the American Express network outside of the United States has had any anti-competitive effects?

(b) If the answer to subpart(a) is anything other than an unequivocal no, please describe in detail the nature of the anti-competitive effects.

(c) If the answer to subpart (a) is no, do you nevertheless contend that repeal of Visa U.S.A.'s by-law or MasterCard's policy prohibiting U.S. member institutions from issuing American Express or Discover cards on their respective networks would cause anti-competitive effects to arise in the United States?

(d) If the answer to subpart (c) is yes, please describe in detail the nature of the anti-competitive effects in the United States that you contend would arise.

Response to Interrogatory No. 6(a): Visa objects to this interrogatory on the grounds that (a) it is unduly vague and ambiguous; and (b) it calls for information not reasonably calculated to lead to the discovery of admissible evidence. The term "anti-competitive effects" is subject to varying meanings depending on the applicable competition law and market conditions at issue. To the extent this interrogatory asks whether Visa contends that the absence of a rule outside the United States analogous to Bylaw 2.10(e) has had anti-competitive effects in the United States market (the relevant geographic market alleged in the Complaint), the answer is no.

Response to Interrogatory No. 6(b): No answer required.

Response to Interrogatory No. 6(c): Visa objects to this interrogatory on the grounds that (a) it is unduly vague and ambiguous; and (b) it is an incomplete hypothetical. The term "anti-competitive effects" is not defined. Assuming that (1) the term "anti-competitive effects" is intended to refer to the type of substantial harm to

consumer welfare in a relevant antitrust market that would be considered unlawful under the antitrust laws, and (ii) this interrogatory refers solely to the elimination of Bylaw 2.10(e) under current market conditions. Visa's answer is that there is not sufficient information to make this determination. However, on balance there is a strong likelihood of harm to consumer welfare if Bylaw 2.10(e) is repealed.

Response to Interrogatory No. 6(d): Loyalty, governance cohesion and the enhancement of stability are indispensable to the success of the Visa pass-through cooperative form of organization, particularly under current market conditions. Bylaw 2.10(e) serves these ends insofar as it protects Visa issuer/members from other association participants who might opportunistically contract with American Express or Discover thereby (1) diverting issuance and transaction volume which might otherwise be enjoyed by Visa cooperative members; (2) potentially causing harm to the Visa brand; and (3) disrupting the cohesiveness of the Visa board and membership in ways such as those outlined by American Express's Chairman Golub in his 1996 speech. Bylaw 2.10(e) also protects against American Express and Discover using strategic partnerships with large Visa members as a means of undermining Visa's ability to launch and sustain competitive product initiatives. There are also likely to be harmful effects that are currently unforeseen or hard to predict. Given the existing highly competitive nature of the payment card industry, it is difficult to imagine that such a significant re-structuring of the industry and competitive balance could do anything *but* cause competitive harm. See Schmalensee Report, pp. 51-56, 120-127, Gilson Report; see also Response to Interrogatory Nos. 5 and 14 (all of which are incorporated herein by reference).

Interrogatory No. 7:

(a) Do you contend that the lack of any policy or by-law prohibiting issuance of American Express and Discover cards on their respective networks by Visa or MasterCard (Europay) member institutions within the European Union is entirely because of the views expressed by the European Commission concerning such a possible Visa European Region by-law in the Spring of 1996?

(b) If the answer to subpart (a) is anything other than an unequivocal yes, please describe in detail all the reason(s) for that lack of such a policy or by-law.

Response to Interrogatory No. 7(a): No. See Response of Visa International to this Interrogatory.

Response to Interrogatory No. 7(b): No Visa entity other than Visa U.S.A. has adopted a bylaw comparable to Bylaw 2 10(e) because no perceived need in terms of rule-based loyalty provisions exists elsewhere. Markets differ. American Express is a major competitor in the United States, and has been for 30 years. In contrast, in most foreign markets, American Express offers charge or credit products directed almost exclusively to the travel and entertainment market segment, much as it once did in the United States. Also, Visa member banks in some markets offer a substantially higher proportion of debit card products than in the United States, with less emphasis on credit products. In some foreign markets, American Express' domestic presence until recently was minimal. Its success in other countries varies from country to country with generalizations being virtually impossible. Given the differing market conditions and banking and legal systems which exist, it is not possible to draw any meaningful information about competition in the American market from the foreign examples. Moreover, while American Express has adopted a policy of contracting with Visa banks should they wish to do so, only 50 or so such contracts have been executed in the past six or seven years and only a handful of those are in significant countries. Further, many, if not most, of those contracts have apparently been directed at expanding acquiring relationships, rather than issuing. Rapp Report, pp. 54-63; Schmalensee Report, pp. 47-51 (incorporated herein by reference).

In light of the foregoing, neither Visa International nor the Visa regions outside of North America have to date considered it to be competitively necessary to adopt by rule what member/issuer self-interest is itself currently providing -- i.e., loyalty and cohesion sufficient to support the Visa brand without a meaningful threat of opportunistic conduct. See also Response of Visa International to this Interrogatory.

Interrogatory No. 8:

(a) Do you contend that if your U.S. member financial institutions issued American Express and/or Discover cards on their respective networks within the United States, that (i) such members, and/or (ii) American Express and/or Discover, would be "free riding" on any of your tangible or intangible assets or investments?

(b) If the answer to subpart (a) is anything other than an unequivocal no, please describe in detail each of your assets or investments that you contend would be the subject of "free riding" by such member institution(s) and/or American Express or Discover.

Response to Interrogatory No. 8(a): Yes.

Response to Interrogatory No. 8(b): A detailed answer is set forth in the Schmalensee Report at pp 64-69 (incorporated herein by reference). To paraphrase for purposes of this response, the Visa "assets or investments" which are subject to free riding by American Express or Discover may be described as intangible, they consist of the knowledge and experience of Visa issuers gained through operating bank card programs under license from Visa. Moreover, while the physical assets and customer accounts are owned by the member institutions as a matter of property law according to the cooperative rules and regulations, the ability of such institutions to opportunistically partner with American Express or Discover will likely divert transactions which otherwise would have been Visa transactions to American Express and Discover, thereby harming all other Visa members. See, *inter alia*, the Deposition Testimony of Michael Beindorff, Bennett Katz, Paul Allen and Richard Hagadorn.

Interrogatory No. 9:

(a) Do you contend that (i) member financial institutions of the other bank card association (i.e., Visa if you are MasterCard or MasterCard if you are Visa) and (ii) that other bank card association, are "free riding" on your tangible or intangible assets or investments when that (those) institution(s) issued cards on that other bank card system?

(b) If the answer to subpart (a) is yes, please describe in detail your assets or investments that would be the subject of "free riding" by such member institution(s) and/or the other bank card association.

(c) If the answer to subpart (a) is no but the answer to Interrogatory 8(a) is yes, please explain in detail the distinction(s) that you contend justify your different answers to these two interrogatories.

Response to Interrogatory No. 9(a): The answer is yes, and no.

Response to Interrogatory No. 9(b): See 9(c), below.

Response to Interrogatory No. 9(c): Visa and MasterCard are both open joint ventures or cooperatives, operated on a pass-through basis, which have competed under conditions of duality since the mid 1970's. Member/issuers have developed both their ability to issue card products and acquire customers as a consequence of their past and continuing membership and investments in both associations. Therefore, it is not clear how the term "free riding" would apply.

Further, American Express and Discover are for-profit organizations whose interests are fundamentally different from the associations. Free riding is a greater concern when tangible or intangible assets are subject to asymmetrical opportunism. See Schmalensee Report, pp. 57-83; Gilson Report (incorporated herein by reference).

Interrogatory No. 10:

(a) Do you contend that the issuance of American Express cards by institutions that also issue Visa and/or MasterCard cards outside the United States has not caused an increase in at least one of the following two items: (i) the number of merchants accepting American Express cards in the countries where such issuance occurs, or (ii) an increase in the total number of American Express cardholders in those countries?

(b) If the answer to subpart (a) is yes, do you also contend that the issuance within the United States of American Express cards by financial institutions that also issue Visa and/or MasterCard cards within the United States would also have no such effects?

(c) If the answers to subparts (a) and (b) are both yes, please explain all the reasons why you nevertheless believe that a by-law or policy prohibiting issuance of American Express and Discover cards by institutions that issue Visa and MasterCard cards in the United States is necessary

(d) If the answer to subpart (a) was yes and to subpart (b) was no, please explain why you contend that there would be such effects in the United States but contend that there have been no such effects outside the United States

Response to Interrogatory No. 10(a): No

Response to Interrogatory No. 10(b): No answer required

Response to Interrogatory No. 10(c): No answer required

Response to Interrogatory No. 10(d): No answer required

Interrogatory No. 11:

(a) Do you contend that American Express would not reach agreement to issue cards on the American Express network with any financial institutions issuing Visa or MasterCard cards in the United States if either Visa U.S.A.'s By-law 2.10(e) or MasterCard's Competitive Programs Policy were repealed?

(b) If the answer to subpart (a) is yes, please describe in detail the basis for that contention

(c) If the answer to subpart (a) is no, please state how many financial institutions you contend would agree with American Express to issue cards on its network in the United States.

Response to Interrogatory No. 11(a): No.

Response to Interrogatory No. 11(b): No answer required.

Response to Interrogatory No. 11(c): This interrogatory is incapable of answer since it asks for a quantitative prediction. The number of agreements would be a function in part of American Express' unilateral determination of what was in its financial interests, based upon maintaining its profitability. Suffice it to say that Visa believes that one or more member/issuers acting in a manner that Visa believes would be harmful to consumer welfare might agree with American Express to issue cards which bear American Express trademarks. It is believed that American Express would endeavor initially to sign only a few such contracts, but with large Visa member/issuers, thereby maximizing the disruptive effect on the association's governance and other harmful effects addressed above Schmalensee Report, pp. 76-127 (incorporated herein by reference).

Interrogatory No. 12:

(a) Do you contend that repeal of Visa U.S.A. By-law 2.10(e) or MasterCard's Competitive programs Policy would have an effect on the number and volume of transactions on your network?

(b) If the answer to subpart (a) is yes, please describe in detail the effect you contend will occur and over what period of time.

Response to Interrogatory No. 12(a): Yes.

Response to Interrogatory No. 12(b): The number of such transactions is a function of the success which American Express would have in signing contracts, the members at issue, the terms of such contracts, and the success of any products issued under such contracts. See also Response to Interrogatory No. 11(c) above. The potential effect on Visa does not turn solely on the actual amount of transactions since there would also be adverse network effects, a potential diminution in the incentive to invest in innovation including (depending on the nature and significance of American Express-member agreements) the ability of Visa to introduce, promote, and sustain certain card programs. Over time the significance of these effects could increase with adverse effects upon consumer welfare. See Schmalensee Report, pp. 76-127 (incorporated herein by reference).

Interrogatory No. 13:

(a) Do you contend that MasterCard or Visa has ever named the other in a comparative advertisement published in any medium disseminated to merchants or cardholders/consumers in the United States?

(b) If the answer to subpart (a) is yes, please identify the nature of each advertisement, where it appeared and for how long. Also identify the Bates number(s) of each copy of such advertisement produced to the Government.

Response to Interrogatory No. 13(a): Visa has named MasterCard in numerous comparative publications with merchants (as well as members). To the extent this interrogatory asks whether Visa contends that it has expressly named MasterCard in a comparative consumer advertisement in the United States disseminated through the mass media, the answer is no.

Response to Interrogatory No. 13(b): No answer required.

Interrogatory No. 14:

(a) Do you contend that there are any pro-competitive benefits to your being a not-for-profit association that would be lost if you were to become a for profit, stock company?

(b) If the answer to subpart (a) is yes, please describe in detail all such pro-competitive benefits.

Response to Interrogatory No. 14(a): Visa objects to this interrogatory on the grounds that it involves an incomplete hypothetical. Assuming that it refers to a change in Visa's structure from an association operated on a pass-through basis to a for-profit, publicly held stock company, but all else being held equal to the extent possible, the answer is yes.

Response to Interrogatory No. 14(b): Visa's non-profit operating structure in which profits are not retained at the system level means that — unlike American Express and Discover — the value of the Visa goodwill is likely to be competed away at the issuing/acquiring levels. Were Visa to begin to operate as, in effect, a franchisor on a profit-maximizing basis the value of the Visa brand would be captured at the system, or franchisor, level. Depending upon other hypothetical assumptions which are neither specified in the question nor easy to predict, there could be very significant adverse welfare effects. Further, the owners of the Visa system (again, unspecified in the question) might choose to make Visa's products available to franchisees in ways that could well lead to adverse consumer welfare consequences. These consequences are also difficult to predict but could include increases in price and reductions in output. See Schmalensee Report, pp. 86-89; Expert Report of Stewart Myers, February 29, 2000 generally (which is incorporated herein by reference).

Interrogatory No. 15:

(a) Do you contend that competition between you and the other bank card association increased between January 1993 and January 1, 1998?

(b) If your answer to subpart (a) is yes, please describe in detail why you believe that to be the case and what the cause(s) for that (those) increase(s) was (were).

Response to Interrogatory No. 15(a): Yes, with the following: Visa and MasterCard have fiercely competed in many respects at all times, regardless of the effects of dual issuance. However, since the late 1980s, there has been a gravitation in the United States away from dual issuance among many large issuers due to changing market conditions and certain Visa management efforts to encourage this trend, leading to the

present situation in which competition between the cooperatives is approximating that which would occur under exclusive issuance. Whatever effects of dual issuance and governance there may have been on inter-association competition in the past, these effects are effectively non-existent currently.

Response to Interrogatory No. 15(b): While this interrogatory calls for a narrative answer which cannot be done comprehensively, we note the following: there has been no single or dominant cause of the decrease in the relevance and prevalence of dual issuance or dual governance. Some of the causes of this trend toward decreasing the relevance and prevalence of dual issuance include: the trend toward consolidation among large issuers; the increasing desire of banks as a marketing preference to align with a single system or network brand; the increasing importance of non-dual debit products; the impact of significant entry of non-bank issuers; and measures undertaken by Visa management that make the Visa systems and brand more valuable to issuers and merchants, encouraging greater issuance of Visa products by banks and usage by consumers.

Interrogatory No. 16:

(a) Do you contend that the Visa International Board of Directors can not compel a repeal of Visa U.S.A.'s By-law 2.10(e) pursuant to Visa International By-law 15.05 by an affirmative vote of $\frac{3}{4}$ of the Board's members, excluding Board members from Visa U.S.A., in support of a motion that By-law 2.10(e) either: (i) causes members to "violate ... policies of the corporation or the laws of any jurisdiction to which such members are subject", or (ii) is inconsistent with the "policies, or otherwise not in the best interests of" Visa International?

(b) If the answer to subpart (a) is yes, please explain in detail the reason(s) why you contend that the Visa International Board does not have that power under By-law 15.05

Response to Interrogatory No. 16(a): See Response of Visa International

Response to Interrogatory No. 16(b): See Response of Visa International.

Interrogatory No. 17:

(a) Do you contend that action(s) taken by Visa U.S.A. and/or Visa International in 1999/2000 to compel or induce Visa member institutions that have representatives on the Visa U.S.A. or Visa International Board to have at least 75% of the

dollar transactions on all their outstanding credit, charge and/or debit cards be on the Visa system moot the Government's case or otherwise affect the Government's ability to obtain equitable relief against you?

(b) If your answer to subpart (a) was yes, please explain in detail (i) each such action and (ii) what portion(s) of the Government's case you contend are moot or otherwise affected and why.

Response to Interrogatory No. 17(a): Yes.

Response to Interrogatory No. 17(b): There is no basis in equity to enjoin that which does not exist and is not likely to reoccur. See, *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953) and its progeny. As the Government is well aware, as a consequence of changing market dynamics, the composition of Visa has been changing markedly in a manner that has the necessary effect of materially reducing the significance of duality. Indeed, the end of dual governance is now an accomplished fact at Visa. There simply is no current public interest in litigating issues associated with an alleged compromise of incentives to innovate and promote supposedly attributable to dual governance. Issues concerning Bylaw 2 10(e) remain a subject for adjudication.

Interrogatory No. 18:

(a) Do you contend that a financial institution's license to issue cards that operate on the Plus network would not end if that institution's membership in Visa U.S.A. ended because that institution began to issue American Express or Discover cards in the United States?

(b) If your answer to subpart (a) was yes, please explain in detail which rules, policies or by-laws of Plus, Visa U.S.A. and/or Visa International you rely on to support that contention.

Response to Interrogatory No. 18(a): The issue has never been presented to Visa and is not addressed in Visa's rules and regulations.

Response to Interrogatory No. 18(b): No answer required.

Interrogatory No. 19:

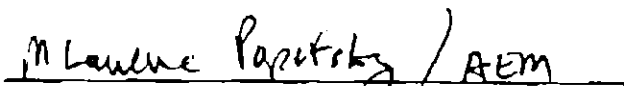
(a) Do you contend that pro-competitive, business justification(s) exist for the Visa U.S.A. Board of Directors not having deemed MasterCard a "competitive" card within the meaning of Visa U.S.A. by-law 2 10(e)?

(b) If your answer to (a) is anything other than an unequivocal "no", please describe in detail the pro-competitive justification(s) you contend exist.

Response to Interrogatory No. 19(a): Yes.

Response to Interrogatory No. 19(b): Visa was led unavoidably to adopt duality in the late 1970's as a consequence of positions taken by DOJ. Since that time, dual issuance, ownership and governance has been a legacy that Visa could not ignore. Visa's governors and owners typically have had in the past, and typically have today, dual card portfolios. Such an extension of Bylaw 2.10(e) is therefore not feasible or in the members' or consumers' best interests. There is also a material difference between applying Bylaw 2.10(e) to another open cooperative versus applying it to a for-profit closed system such as American Express or Discover.

DATED: March 10, 2000.


M. Laurence Popofsky

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VISA U.S.A. INC.

**Credit Card Volume (Sales And Cash)
Four Quarters Running December 31, 1999
Visa Board Members**

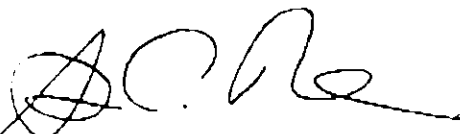
Member	Estimated Visa Share of Credit Card Volume %
Wachovia Corporation	63%
US Bancorp.	97%
Suntrust Bankcard	79%
Wells Fargo & Company	46%
FNBO	58%
First Union Corporation	77%
Bank One Corporation	83%
BankAmerica Corporation	79%
Associates National Bank	68%
Texas Independent Bancshares, Inc	100%

EXHIBIT 1

VERIFICATION

I, Stephen Theoharis, am Senior Vice President and Assistant General Counsel for defendant Visa U.S.A. Inc., and I have been authorized to make this Verification on its behalf. I have read **DEFENDANT VISA U.S.A. INC.'S ANSWERS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES** and know the contents thereof. The same is true of my own knowledge or is based on information developed at my direction by persons at Visa U.S.A. Inc. with knowledge of such matters. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, on this 10th day of March, 2000.

A handwritten signature in black ink, appearing to read 'S. Theoharis', written over a horizontal line.

Stephen Theoharis

PROOF OF SERVICE BY FACSIMILE

I, Jan M. Knabe, declare as follows:

I am employed with the law firm of HELLER, EHRMAN, WHITE & McAULIFFE, whose address is 333 Bush Street, San Francisco, California 94104. I am readily familiar with the business practices of this office. At the time of transmission, I was at least eighteen years of age and not a party to this action.

On, March 10, 2000, at approximately 5:45 p.m., by use of facsimile machine, I served a copy of the within document(s):

DEFENDANT VISA U.S.A. INC.'S ANSWERS TO PLAINTIFF'S THIRD SET OF
CONTENTION INTERROGATORIES

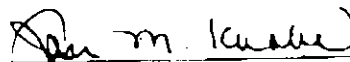
on the following interested parties:

James C. Egan, Esq.
Clifford Chance Rogers & Wells
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2028
Facsimile: 202-434-0800

John D. Gordan III, Esq.
Morgan, Lewis & Bockius
101 Park Avenue
New York, NY
Facsimile: 212-309-6273

Melvin Schwarz, Esq.
U.S. Department of Justice
Antitrust Division
325 Seventh Street, N.W., Suite 300
Washington, D.C. 20530
Facsimile: 202-307-9952

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 10, 2000.


Jan M. Knabe